

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

SAN LUIS COASTAL UNIFIED
SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH No. N2005080655

DECISION

Judith A. Kopec, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division, State of California, heard this matter on September 13 through 16, and September 20 through 23, 2005, in San Luis Obispo, California.

Peter A. Sansom, Attorney at Law, represented Petitioner San Luis Coastal Unified School District (District). Jackie Kirk-Martinez, the District's Director of Student Services, was also present.

Andrea Marcus, Attorney at Law, represented Respondent Student (Student). Student's mother was also present. Jeff Stein, M.A., and Anne Zachry were present at times during the hearing.

Testimony concluded on September 23, 2005, and the record remained open for closing briefs. Respondent requested an extension of time on October 4, 2005, which was granted to both parties for good cause shown. The parties submitted closing briefs, the record was closed, and the matter submitted on October 11, 2005.

ISSUES¹

1. Did the District fail to offer a free appropriate public education (FAPE) to Student from February 10, 2005, through February 10, 2006, by:
 - a. Failing to develop appropriate goals in the February 10 and May 26, 2005, Individualized Education Programs (IEP)?
 - b. Failing to adequately describe services to be provided by a Resource Specialist in the May 26, 2005, IEP?
 - c. Failing to provide Mother the opportunity to meaningfully participate in the May 26, 2005, IEP?
 - d. Failing to provide services in the areas of assistive technology (AT), facilitated speech and language, self-advocacy, demystification counseling, and intensive reading from Lindamood-Bell or a trained speech and language pathologist?
2. Did the District fail to assess Student in the areas of AT, Central Auditory Processing Disorder (CAPD), visual processing, and speech and language?
3. Is the District required to reimburse Student for independent educational evaluations (IEE) in the areas of occupational therapy (OT) and psychoeducation, and provide an IEE at public expense in the areas of speech and language?
4. Is the District required to provide compensatory education services?

FACTUAL FINDINGS

1. Student is an 11-year-old boy who has been eligible for special education services since pre-school. He was initially eligible in the category of Speech/Language Impaired. When he was in first grade in February 2001, he was found eligible in the category of Other Health Impaired. Student was in fifth grade at the District's Bishop's Peak Elementary School during the 2004-2005 school year, and is in sixth grade at the same school during the 2005-2006 school year.
2. A team met and developed an IEP on February 10, 2005, to be in effect through February 10, 2006. Mother did not consent to implementation of the IEP.
3. An IEP meeting was held on April 29, 2005, to consider private assessments that Mother obtained from Dr. Caryn Kovar and Ms. Carol Moran of the Children's Health

¹ The parties agreed to 20 specific allegations during a Pre-Hearing Conference on September 8, 2005. The issues have been re-framed for the purpose of this Decision.

Council (CHC). At this meeting, Mother informed the District in writing that she believed that Student had not received the services necessary from the District to teach him required language skills. She requested the District provide Student with instruction in a specific program at the Lindamood-Bell center during the summer of 2005, and with instruction at the Lindamood-Bell center or from Speech Pathologist Marna Scary-Larkin during the 2005-2006 school year.

4. An IEP meeting was held on May 26, 2005, and the IEP team developed a proposed amendment to the February 10, 2005, IEP. Mother did not consent to implementation of the amended IEP.

Goals in the February 10 and May 26, 2005, IEPs

5. Seven of the eight goals in the February 10, 2005, IEP, and all five of the goals in the May 26, 2005, IEP are at issue. Goal 1 in the February 10, 2005, IEP was developed so that Student would learn to solve a variety of math problems requiring a number of analytical steps. Student's work samples can be used to evaluate his progress.

6. Goal 2 addresses Student's need to increase his reading comprehension in his grade-level curriculum (fifth grade), and his instructional reading level. His progress can readily be evaluated through work samples. This goal is similar to a goal in Student's previous IEP, dated February 19, 2004. However, the goals are not identical. They identify different tasks to be performed and different levels of proficiency.

7. Goal 3 addresses Student's need to improve his reading fluency by increasing it by a specified number of words per minute. Student's present level of performance is identified in terms of the speed with which he can read text at a specific level within the Scholastic Research Association (SRA) reading program. This goal can be measured by his work samples and the teacher's records.

8. Goal 4 addresses Student's need to develop his skills in written composition by having him both identify and compose topic sentences, supporting sentences and concluding sentences. The present level of performance relates to Student's ability to write a sentence, not his ability to compose a paragraph. However, the goal is clearly written and can readily be implemented. Student's work samples can provide data to assess progress. There is no evidence that Mother was unable to participate in discussion of this goal at the IEP team meeting.

9. Goal 6 is designed to improve Student's stamina for reading by decreasing the physical stress created by his current posture. It will also assist Student in his classroom activities by developing his ability to track words with his eyes as he reads books and white boards. The description of Student's present level of performance is specific and detailed.

10. Goal 7 is designed to meet Student's need to develop his articulation of specific sounds. This goal is similar to one included in his February 2004 IEP. While the

proposed goal continues to work on /l/ sounds, it is not identical to the prior goal. Although evidence showing that a goal that is repeated without success may indicate a need to re-evaluate the goal, there is no evidence of this.

11. Goal 8 addresses Student's need to develop vocabulary by understanding synonyms, antonyms and homographs. The present level of performance does not indicate his current level of vocabulary or his ability to use synonyms, antonyms and homographs. According to licensed Speech and Language Pathologist Rosalyn McQuade, who has provided speech and language services to Student since kindergarten, she understood this goal and would be able to implement it. There is no evidence that Mother was unable to participate in discussion of this goal at the IEP team meeting.

12. The goals in the May 26, 2005, IEP were developed in response to the private assessment from CHC. The present levels of performance for Goals 1 through 4 reference the lengthy CHC assessment report, although they do not identify specific data from the report. The goals are clearly written and provide a standard by which to evaluate Student's performance. Student's performance on these goals can be tracked using goal charts or other teaching records.

13. Goal 5 is designed to improve Student's decoding skills. The description of Student's present level of performance does not provide specific information about the words that he has difficulty decoding. The District is able to properly implement this goal. There is no evidence that Mother was unable to participate in discussion of the goals at the IEP team meeting.

Services to be Provided by Resource Specialist in May 26, 2005, IEP

14. The May 26, 2005, IEP indicates that Resource Specialist Monica Stank will provide Student with non-intensive, school-based resource/special education services, five days per week outside the regular classroom. The initial offer of 120 minutes a day was increased to 150 minutes to allow additional time for Student to receive assistance learning new software programs. Mother testified that she understood this. There is no evidence that anyone responsible for either implementing or evaluating this IEP failed to understand the type and amount of services the Resource Specialist would provide Student.

Opportunity for Meaningful Parental Participation in the May 26, 2005, IEP

15. Student argued that his mother was denied meaningful participation in the May 26, 2005, IEP because his present levels of performance were not communicated to her. However, there is no evidence that Mother's participation in the IEP meeting was negatively impacted.

16. Student also argued that the IEP team failed to consider or discuss how the proposed IEP was expected to benefit Student in terms of measuring improvement in his reading. Ms. Stank provided the IEP team a written report of Student's progress that was

discussed at the May 26, 2005, meeting. Ms. Stank described how she had and would continue to evaluate his progress in reading. She reported that he continued to improve throughout the year in the area of reading fluency, but he had made minimal progress in reading comprehension. Ms. Stank reported that Student began the school year reading at a 3.5 grade level (third grade, fifth month). He read about 65 words per minute in a “cold read,” the first time reading the passage, and averaged 100 words per minute in a “hot read,” after reading the passage a few times. At the time of the meeting, he averaged 90 words per minute in a “cold read” and 155 words per minute in a “hot read,” and was reading at the instructional level in both the fourth and fifth grade reading textbooks. Ms. Stank also reported that Student had access to the core general education curriculum. He read the core novels with his fifth grade class, completed projects on those novels, and prepared monthly book reports.

17. Student also argued that his mother was denied meaningful participation because the District presented her with a pre-typed IEP that was not negotiable. However, the evidence does not support this. District staff brought a draft IEP to the meeting; portions of it were typed, others were not. As a result of discussion during the meeting, some revisions were made to the IEP. The purpose of the meeting was to respond to Mother’s requests from the April 29, 2005, meeting and the private evaluation from Dr. Kovar and Ms. Moran. The IEP team presented additional goals to respond to some of the issues raised in the private evaluation.

AT Services

18. The February 10, 2005, IEP team discussed Student’s needs for AT and included them in the IEP. Student had access to a variety of aids in his general education classroom and special education resource classroom. He had access to a computer in his general education and special education classrooms as well as in the school’s computer laboratory. In addition, during February 2005, Student was given a laptop computer of his own, which he used in school and at home for the rest of the school year. At his May 25, 2005, IEP, the team added an additional 30 minutes to Student’s time in the special education resource classroom so that he could learn to use additional software on the computer.

Facilitated Speech and Language Services

19. Speech and Language Pathologist Rosalyn McQuade screened Student for speech and language services when he was in kindergarten and provided speech and language services to him from 2000 through June 2004. According to Ms. McQuade, Student did not need to have one-on-one speech and language services to help him with social communication. The CHC report recommended that a speech and language pathologist observe Student in the playground at lunch or recess and help him generalize the skills he is learning to specific situations. Ms. Moran based this recommendation on information from Mother. Student offered no other evidence concerning this issue. Ms. McQuade’s opinion is deserving of considerable weight because of her education and training and her long-term experience working with Student.

Self-Advocacy Services and Demystification Counseling

20. Ms. Stank persuasively testified that Student asks for assistance when he needs it. Student offered no evidence on this issue. Ms. Moran, Student's only witness concerning demystification counseling, was unable to determine if he would benefit from it.

Intensive Reading Services

21. Student alleged that the District failed to provide him with Lindamood-Bell services two hours a day from either a Lindamood-Bell center or a trained speech and language pathologist. Lisbeth Ceaser, Ph.D., a member of the Reading Faculty, College of Education, California Polytechnic State University, San Luis Obispo, reviewed Student's educational records, the District's assessments, and the private assessment by CHC. According to Dr. Ceaser, Student needs a program of comprehensive reading instruction in the areas of decoding, fluency and comprehension. While all three areas are important, the state educational standards recognize that reading comprehension is the most important area. Decoding skills are important technical skills, particularly for young children. However, as children grow older, they need additional support in phonics and comprehension to understand the meaning of language. Dr. Ceaser opined that Student's decoding skills are consistent with his cognitive ability, and his fluency is consistent with his decoding skills. Dr. Ceaser testified that since Student is decoding and reading with comprehension at the fourth grade level, he has sufficient decoding ability to move on and further develop his comprehension.

22. The SRA reading program, which is one of the programs the District uses, is a structured program that addresses decoding, fluency, vocabulary, and comprehension. Dr. Ceaser opined that the SRA program would benefit Student in all areas of reading development. The SRA program links the further development of his decoding skills with the development of his reading comprehension, and it builds on his strengths. Student requires a multi-sensory and systematic reading program, which SRA provides. Although Student will benefit from some one-on-one reading instruction, it is also important that he learn reading skills in a group setting so that he can benefit from and further develop peer communication skills.

23. Dr. Ceaser has used the Lindamood-Bell reading program with children. She believes that the Lindamood-Bell program would address gaps in Student's overall reading ability by focusing on specific skills in isolation. In contrast, SRA addresses these gaps while building on Student's strengths and working within the context of developing all the skills necessary for reading development. Dr. Ceaser opined that SRA was a more effective program than Lindamood-Bell to assist Student to develop reading comprehension.

24. Dr. Ceaser opined that if Student were to receive two hours a day of Lindamood-Bell reading instruction, and spent the remainder of his school day on his other special education services and general education curriculum, she would expect that the gap in reading ability between Student and his peers would increase. This is because he would be

getting less exposure to academic grade level text, and the more grade level comprehension he missed, the further behind he would get.

25. Nikki Jakins, Clinic Director and Regional Manager of Clinics, Lindamood-Bell Learning Processes, Inc., testified about Student's progress after 96 hours of intensive instruction in two of the Lindamood-Bell programs. These programs focus on increasing Student's phonemic awareness. A comparison of Student's scores on the Gray Oral Reading Test 4 (GORT-4) that Ms. Moran administered in January 2005, and the scores on the GORT-4 that Ms. Jakins administered in June 2005 before he received any Lindamood-Bell services, shows that prior to receiving any Lindamood-Bell services, Student had improved in all areas tested: reading rate, accuracy, fluency, and comprehension.

26. Ms. Jakins does not have any experience using the SRA reading program and, unlike Dr. Ceaser, is unable to compare the two approaches. Dr. Ceaser is an expert in reading education, reading methodologies, and the development of reading programs to assist students with a variety of deficits contributing to poor reading skills. Dr. Ceaser's testimony is entitled to considerable weight and deference. Ms. Jakins is an employee of the Lindamood-Bell Learning Centers. She has a professional, if not personal, interest in advocating the benefits of the Lindamood-Bell programs and their methodologies.

AT Assessment

27. The IEP team discussed Student's needs for AT and included them in the February 10, 2005, IEP.² Student offered no evidence that his parents requested that the District perform an AT assessment at or prior to this meeting.³

CAPD Assessment

28. Linda Olson, Speech-Language Pathologist for the District, did not recommend that Student be assessed for CAPD. According to Ms. Olson, a CAPD assessment is not appropriate for Student because of his chronological age, his cognitive deficits, and his language deficits. Student did not offer any contrary evidence.⁴

Visual Processing Assessment

² The only allegation concerning an AT assessment involves the February 10, 2005, IEP.

³ Student incorrectly stated in his closing brief that Paul Mortola's testimony was excluded based on the District's objection under Education Code section 56505, subdivisions (e)(7) and (8) that Student failed to turn over a copy of any assessment done by Mr. Mortola. The ALJ ruled that if Student could make a factual showing that he needed an AT assessment, then Mr. Mortola may be able to provide his opinion about the requirements of the assessment. Student offered no such evidence. The ALJ also ruled that Mr. Mortola may be able to testify about whether the laptop computer provided to Student was capable of using the software the District offered. Although Mr. Mortola was called for further testimony, he was not questioned about this.

⁴ Student's brief offered three sentences and cited eight exhibits on this issue; none of the exhibits mentioned CAPD.

29. District personnel gave Student a variety of assessments which evaluated his visual processing: Occupational Therapist Susan Catron administered a Developmental Test of Visual Motor Integration (VMI), School Psychologist Dean Johnson administered the Wechsler Intelligence Scale for Children, 4th Edition (WISC-IV), and Adaptive Physical Education Teacher Danilo S. Cariaga conducted a screening test for visual processing problems. None of them indicated the need to do further testing. Student offered no evidence on this issue.

Speech and Language Assessment

30. Speech and Language Pathologist Roslyn McQuade prepared Student's speech and language evaluation for his triennial evaluation in February 2004. Ms. McQuade testified that she gave Student the standard battery of tests that were appropriate for him at the time. Student offered no evidence showing that the District's assessment was not adequate.

Reimbursement for IEE in the Area OT

31. Mother became concerned that Student was not progressing in school. In January 2003 she requested that the District refer Student to the California Diagnostic Center for an assessment. After the District denied this request, Mother spoke with Student's pediatrician about her belief that Student was not progressing in school. Following the pediatrician's recommendation, Mother had Student evaluated by Terence Sanger, M.D., Assistant Professor of Neurology and Neurological Sciences, Division of Child Neurology, Stanford University Medical School. She also had him evaluated by Caryn Kovar, Ph.D., and Carol Moran, M.A., at the CHC. Mother testified that she did not specifically request an IEE at public expense because the District had denied her request of January 2003 for an assessment through the California Diagnostic Center.

32. Occupational Therapist Susan Catron administered the VMI to Student, which measures visual motor processing. Ms. Catron's OT assessment was an appropriate developmental assessment for Student because it covered areas in which he needs further services, and it provided sufficient information for the IEP team.

33. Dr. Terence Sanger gave Student a neurological examination with an emphasis on assessing him for any movement disorder. Dr. Sanger reviewed Ms. Catron's OT assessment. He testified that he defers to an Occupational Therapist's assessment concerning a child's need for OT. Dr. Sanger provided a medical assessment of Student. He did not assess him for his educational needs.

Reimbursement for IEE in the Area of Psychoeducation

34. School Psychologist Dean Johnson prepared a Multidisciplinary Triennial Report for Student dated February 12, 2004. He administered the WISC-IV, which is a standardized test of cognitive ability. Student's Full Scale IQ, which combines all subtests and indicates his total cognitive ability, was 71, in the borderline range. This score indicates that Student is cognitively delayed. His Full Scale IQ from three years earlier was 86, which is in the low average range. According to Mr. Johnson, the most recent WISC-IV test has greater validity. In addition, the subtests scores are generally consistent and do not show significant variation between them, indicating that the results are reliable.

35. Mr. Johnson reviewed Student's results from the Woodcock-Johnson III, Tests of Achievement (WJ-III) administered by Resource Specialist Margie Walters in January 2004. He found that the scores on the WJ-III were generally consistent with those on the WISC-IV. Because Student exhibited little variation between the subtests and tests, Mr. Johnson did not believe that Student needed additional assessment.

36. Mr. Johnson discussed the results of Student's triennial evaluation at an IEP team meeting on February 19, 2004, which Mother attended. Mr. Johnson reviewed the results of the standardized tests, explained the subtests and the scores, and summarized what was indicated concerning Student's strengths and weaknesses. Mother signed the IEP, indicating that she received and reviewed the triennial report and that she agreed with the IEP, except for the rating concerning physical education.

37. In January 2005, Dr. Kovar evaluated Student's cognitive functioning using the Stanford-Binet Intelligence Scales, 5th Edition (SB-V). His Full Scale IQ was 73, in the borderline range. Mr. Johnson testified that one can appropriately compare scores on the WISC-IV and SB-V. In his view, Student's results on the SB-V further validate his results on the WISC-IV. As with his scores on the WISC-IV, Student's subtest scores on the SB-V are generally consistent and do not exhibit significant variation.

IEE at Public Expense in the Areas of Speech and Language

38. Student offered no evidence that his parents had previously communicated their disagreement with the District's speech and language assessment, which is described in Factual Findings paragraph 19, or had requested an IEE in the areas of speech and language at public expense.

APPLICABLE LAW

Requirements of a FAPE

1. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA) and California law.

(20 U.S.C. § 1412(a)((1)(A))⁵; Ed. Code, § 56000.⁶) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State’s educational standards, and that conform to the student’s IEP. (20 U.S.C. § 1401(8); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined in pertinent part as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(22); Ed. Code, § 56031.) Special education related services include in pertinent part developmental, corrective, and supportive services, such as speech-language pathology services and occupational therapy, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

2. A school district must provide “a basic floor of opportunity . . . [consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability].” (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201.) The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child’s potential. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley*, *supra*, 458 U.S. at pp. 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

3. In addition to these substantive requirements, the Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. Thus, the analysis of whether a student has been provided a FAPE is two-fold: (1) the school district must comply with the procedural requirements of the IDEA, and (2) the IEP must be reasonably calculated to provide the child with educational benefits. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley*, *supra*, 458 U.S. at pp. 206-207.)

4. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.*, *supra*, 267 F.3d at p. 892.) To constitute a denial of a FAPE, procedural violations must result in deprivation of educational benefit or a serious infringement of the parents’ opportunity to participate in the IEP process (*Ibid.*)⁷

5. As the petitioner, the school district has the burden of proving that it has complied with the IDEA. (*Schaffer v. Weast* (Nov. 14, 2005, No. 04-698) ____ U.S. ____ [2005 U.S. Lexis 8554].)

⁵ The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The allegations in this matter involve IEPs developed prior to July 1, 2005. Accordingly, the IDEA will be applied and all citations to Title 20 United States Code are to sections in effect prior to July 1, 2005. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 fn. 1.)

⁶ The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. (Stats. 2005, ch. 653.) All citations to the Education Code are to sections in effect prior to October 7, 2005.

⁷ A substantially similar standard was codified in the IDEIA. (20 U.S.C. § 1415(f)(3)(E)(ii).)

Requirements of an IEP

6. An IEP must include in pertinent part a statement of the child's present levels of educational performance; a statement of measurable annual goals; a statement of the special education and related services and supplementary aids and services to be provided; and a statement of how the child's progress toward the annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i), (ii), (iii) and (vii)(I); 34 C.F.R. § 300.347(a)(1), (2), (3) and (7)(i); Ed. Code, § 56345, subd. (a)(1), (2), (3) and (9).)

7. Measurable annual goals enable the student, parents, and educators to monitor progress and to revise the IEP consistent with the student's instructional needs. (Appen. A to 34 C.F.R. Part 300, Notice of Interpretation, 64 Fed. Reg. 12471 (Mar. 12, 1999).) While the required elements of the IEP further important policies, "rigid 'adherence to the laundry list of items [required in the IEP]' is not paramount." (*W.G. v. Bd. of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, citing *Doe v. Defendant I* (6th Cir. 1990) 898 F.2d 1186, 1190-1191.)

8. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)⁸ "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987), *supra*, 811 F.2d at p. 1314.)

Parental Participation in IEP Process

9. A parent is a required and vital member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. §§ 300.344(a)(1); Ed. Code, §§ 56341, subd. (b)(1) [parents are members of IEP team].) The IEP team must consider the concerns of the parents for enhancing their child's education throughout the child's education. (20 U.S.C. §§ 1414(c)(1)(B) [during evaluations], (d)(3)(A)(i) [during development of IEP], (d)(4)(A)(ii)(III) [during revision of IEP]; 34 C.F.R. §§ 300.343(c)(2)(iii) [during IEP meetings], 300.346(a)(1)(i) [during development of IEP], (b) [during review and revision of IEP], 300.533 (a)(1)(i) [during evaluations]; Ed. Code, §§ 56341.1, subd. (a)(1) [during development of IEP], subd. (d)(3) [during revision of IEP], and subd. (e) [right to participate in IEP].)

⁸ Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (*Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F.Supp.2d 1213, 1236).

10. The IEP process provides that the parents and school personnel are equal partners in decision-making; the IEP team must consider the parents' concerns and information they provide regarding their child. (Appen. A to 34 C.F.R. Part 300, Notice of Interpretation, 64 Fed. Reg. 12473 (Mar. 12, 1999).) While the IEP team should work toward reaching a consensus, the school district has the ultimate responsibility to determine that the IEP offers a FAPE. (*Ibid.*)

11. School district personnel may bring a draft of the IEP to the meeting; however, the parents are entitled to a full discussion of their questions, concerns and recommendations before the IEP is finalized. (Appen. A to 34 C.F.R. Part 300, Notice of Interpretation, 64 Fed. Reg. 12478 (Mar. 12, 1999).) A parent has meaningfully participated in the development of an IEP when the parent is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

*Requirements of an Evaluation or Assessment*⁹

12. A school district must re-evaluate a child with a disability at least once every three years, or if a parent or teacher requests one. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536(b); Ed. Code, § 56381, subd. (a).) A school district is required to assess a child in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.532(g); Ed. Code, § 56320, subd. (f).) A school district is required to use assessments that provide relevant information that directly assist persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(3)(D); 34 C.F.R. § 300.532(j).)

Requirements for Assistive Technology Devices

13. A school district must provide any AT device that is required to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.308(a); Ed. Code § 56341.1, subd. (b)(5).) An AT device is any item that is used to increase, maintain or improve the functional capabilities of a child with a disability. (20 U.S.C. § 1401(1).)

14. There is no express requirement that a school district perform an AT evaluation. The District argued that there was no requirement that a student be given an AT assessment because neither the IDEA nor California law include an AT evaluation in its requirement that a child be evaluated in all areas of suspected disability. The District's understanding of its obligation to evaluate a child is too narrow. AT devices or services may be required as part of the child's special education services, related services, or

⁹ An evaluation or re-evaluation under the IDEA is the same as an assessment or re-assessment under California law. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a).)

supplementary aid and services. (34 C.F.R. § 300.308(a).) A school district is required to use the necessary assessment tools to gather relevant functional and developmental information about the child to assist in determining the content of the child's IEP. (34 C.F.R. § 300.532(b)(2).) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. (34 C.F.R. § 300.532(h).) Therefore, in the proper circumstance, a school district is required to perform an evaluation of a child's need for AT devices or services.

Requirements for an IEE

15. A parent is entitled to obtain an IEE of a child. (20 U.S.C. § 1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district responsible for the child's education. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by a school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) An IEE obtained at private expense must be considered by the district in any decision concerning a FAPE for the child. (34 C.F.R. § 300.502(c)(1); Ed. Code, § 56329, subd. (c).)

LEGAL CONCLUSIONS

Did the District fail to develop appropriate goals in the of February 10 and May 26, 2005, IEPs?

1. Based on Factual Findings paragraphs 5, 6, 7, 9 and 10, and Applicable Law paragraph 6, Goals 1, 2, 3, 6 and 7 in the February 10, 2005, IEP complied with the IDEA's procedural requirements. Goals 1, 2, 3, and 6 are clearly defined and can be accurately measured. Goals 3, 6, and 7 include adequate present levels of educational performance.

2. Based on Factual Findings paragraphs 8 and 11, and Applicable Law paragraph 6, Goals 4 and 8 in the February 10, 2005, IEP failed to comply with the procedural requirement for present levels of performance. As stated in Applicable Law paragraph 4, in order for these procedural violations to constitute a denial of a FAPE, they must result in a deprivation of educational benefits, or a serious infringement on Mother's opportunity to participate in the IEP process. Relying on Applicable Law paragraphs 10 and 11, there is insufficient evidence that these procedural violations will result in a deprivation of educational benefits, or seriously infringed Mother's ability to meaningfully participate in the IEP process.

3. Based on Factual Findings paragraphs 6, 7, 9, 10, and 11, and Applicable Law paragraphs 2 and 8, Goals 2 and 3, and 6 through 8 in the February 10, 2005, IEP are reasonably calculated to have an educational benefit. These goals address Student's unique needs and are reasonably calculated to have educational benefit.

4. Based on Factual Findings paragraphs 12 and 13, Goals 1 through 5 in the May 26, 2005, and Applicable Law paragraph 6, the IEP failed to comply with the procedural requirements for present levels of performance. Relying on Applicable Law paragraphs 4, 10 and 11, there is insufficient evidence that these procedural violations will result in a deprivation of educational benefits, or seriously infringed Mother's ability to meaningfully participate in the IEP process.

5. Based on Legal Conclusions paragraphs 1 through 4, the goals in the February 10 and May 26, 2005, IEPs are appropriate.

Did the District fail to adequately describe the services to be provided by a Resource Specialist in the May 26, 2005, IEP?

6. Based on Factual Findings paragraph 14 and Applicable Law paragraph 6, the description of services to be provided by the Resource Specialist in the May 26, 2005, IEP is adequate.

Did the District fail to provide Mother an opportunity to meaningfully participate in the May 26, 2005, IEP?

7. Based on Factual Findings paragraphs 12 and 13, and 15 through 17, and Applicable Law paragraphs 9 through 11, Mother was provided an opportunity to meaningfully participate in the May 26, 2005, IEP.

Did the District fail to provide services in the areas of AT, facilitated speech and language, self-advocacy, demystification counseling, and intensive reading from Lindamood-Bell or a trained speech and language pathologist?

8. Based on Factual Findings paragraph 18 and Applicable Law paragraphs 1, 2, and 13, the District provided Student with required AT devices or services.

9. Based on Factual Findings paragraph 19 and Applicable Law paragraphs 1 and 2, the District was not required to offer Student facilitated social experiences using one-on-one services of a Speech and Language Pathologist during naturally-occurring social opportunities.

10. Based on Factual Findings paragraph 20 and Applicable Law paragraphs 1 and 2, the District was not required to offer Student services to develop his self-advocacy skills, or de-mystification counseling.

11. Based on Factual Findings paragraphs 21 through 26 and Applicable Law paragraphs 1, 2, and 8, the District was not required to offer Student the requested services from either a Lindamood-Bell center or a trained speech and language pathologist. Student essentially argued that the District's reading program did not maximize his potential. In his

view, he was capable of reading at grade level and the District was obligated to do what was necessary to get him reading at grade level. However, the law as stated in Applicable Law paragraphs 2 and 8 does not support this view. The District's offer of reading services was directed at Student's unique needs. Even though the IEP was not implemented, based on Factual Findings paragraphs 16 and 22, Student showed more than a trivial or minimal level of progress through the end of fifth grade. In addition to the academic progress that was reasonably expected from the District's offer, the District also showed that Student would be reasonably expected to receive benefits in non-academic areas. The District's offer of reading services met Student's unique needs and was reasonably calculated to provide him with an educational benefit.

Did the District fail to assess Student in the areas of AT, CAPD, visual processing, and speech and language?

12. Based on Factual Findings paragraph 24 and Applicable Law paragraphs 12 and 14, the District did not need to perform any further evaluation of Student's AT needs.

13. Based on Factual Findings paragraph 25 and Applicable Law paragraph 12, the District was not required to perform an evaluation of Student for CAPD.

14. Based on Factual Findings paragraph 29 and Applicable Law paragraph 15, the District was not required to perform an evaluation of Student in the area of visual processing.

15. Based on Factual Findings paragraph 30 and Applicable Law paragraph 12, the District was not required to perform any further evaluation of Student's speech and language needs.

Is the District required to reimburse Student for IEEs in the areas of OT, psychoeducation, and speech and language?

16. Based on Factual Findings paragraphs 31 through 33 and Applicable Law paragraph 15, the District is not required to reimburse Student for Dr. Sanger's report because the District performed an adequate OT assessment. Even if the evidence supported a finding that the District's OT assessment was not adequate, the District would still not be required to reimburse Student for Dr. Sanger's report because he did not perform an OT assessment.

17. Based on Factual Findings paragraphs 31 and 34 through 37 and Applicable Law paragraph 15, the District is not required to reimburse Student for the CHC report by Dr. Kovar and Ms. Moran. The District performed an adequate psychoeducational assessment.

18. Based on Factual Findings paragraphs 31 and 30 and Applicable Law paragraph 15, the District is not required to provide an IEE at public expense for speech and

language. The District's assessments provided sufficient information for IEP team have a clear understanding of Student's relative strengths and weaknesses and offer services that meet his unique educational needs.

Is the District required to provide compensatory education services?

19. Based on Legal Conclusions paragraphs 1 through 18, the District offered Student a FAPE for the period February 10, 2005, through February 10, 2006. There is no evidence supporting the request for compensatory education services.

ORDER

The District's request for a determination that it offered Student a FAPE for the period February 10, 2005, through February 10, 2006, is granted.

PREVAILING PARTY

Education Code section 56507, subdivision (d) requires s decision to indicate the extent to which each party prevailed on each issue heard and decided. The District prevailed on all issues.¹⁰

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: December 27, 2005

JUDITH A. KOPEC
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

¹⁰ To the extent that procedural violations were found, they did not constitute a denial of a FAPE.